




Corporate Social Responsibility in Brazil and China: a (not so) Contrasting Regulatory Framework

Annuska Macedo Santos de França Paiva Maia 

IFPB - Instituto Federal de Educação, Ciência e Tecnologia da Paraíba, João Pessoa-PB, Brazil
annuska.paiva@ifpb.edu.br

Abstract. This paper regards Corporate Social Responsibility (CSR) as a category of interest to the Law, linked to the companies social function, under jurisdictional control, to put on effect public development objectives. The problem asks how Brazil and China regard the government role to promote CSR aligned to national development goals. Whilst the profusion of definitions may have driven CSR away from social concerns, contrary to the wishes of Howard Bowen, its fundamental author, national legislation may impregnate this concept on social function of property. Being both in the same UNCTAD policy framework for CSR, Brazil and China may use regulation to steer CSR programs to public policy objectives. There is considerable room for improvement, as nor the reduction of CSR to funding obligations, without breaking the philanthropic-voluntarist perspective of corporate responsibility, neither the overuse of tax benefits strategies are enough to achieve true sustainable development.

Keywords: Corporate Social Responsibility, CSR frameworks, Soft regulation.

1 Introduction

State is no longer the sole responsible for national development: companies also play a role, which justifies the interest of international treaties regarding corporations. Considered a “Pflichtthema” – a mandatory topic in any discussion – in Business Administration, Corporate Social Responsibility (CSR) still causes strangeness in legal considerations. Perhaps due to its excessive theorizing, with a proliferation of nomenclatures like corporate citizenship, social performance or sustainable responsibility business, CSR does not provide clear distinctions about what is part of the corporative intra muros role and what is an advance for effective social improvement – or, at least, containment of the social impacts presented by economic activity. Management Theory is yet to provide definitive answers, but CSR breaks through the international agenda as a way to connect companies to development, on its economic, environmental and social aspects. Although initially regarded as New Corporative Ethics, corporate philanthropy has economic value, as a marketing strategy. Thus, social investment can turn into profit.

The academic hors d'oeuvres for contemporary CSR is regarded as the work *Social Responsibilities of the Businessman*, by Howard R. Bowen, which considers corporate

social responsibility as “the obligations of businessmen to pursue policies, make decisions or follow desirable courses of action to promote the goals and values of society”, inaugurating an institutional perspective of the concept [1]. Based on research conducted by Fortune magazine in 1946, Bowen indicates that the social conscience of company managers encompasses the idea that executives would be responsible for the consequences of their actions, in a broader sphere than mere retribution for losses and damages[2,3]. This idea relates to the modern social function of property, an expression findable in 20 Constitutional texts around the globe according to ConstituteProject database [4].

Both China and Brazil have legislation on social function of property, which drives an increase on CSR programs adopted by national companies. This characteristic makes their CSR policies the most compatible among countries in the geopolitical BRICS bloc [5]. This paper aims to analyze CSR framework in China and Brazil, contrasting the government role on promoting social responsibility of business on both countries, by using comparative research with historical transitional method [6].

2 CSR Regulatory Frameworks Across the Globe

Traditional definitions keep CSR and corporate social function in distinct fields, which causes an unnecessary dichotomy between statecentric regulation and autoregulation frameworks.

Regional regulations have been adopted, with varying degrees of effectiveness. The European Union has issued a national legislation-generating directive on non-financial reporting obligations based on international frameworks such as the Guiding Principles, the Global Compact and the UN Sustainable Development Goals, and ISO 2600: 2010, however the lack of control mechanisms challenges their relevance.

Another effort to close the gap has led to national legislation on CSR, with much diverse characteristics, following the general idea of what should be the role of State to promote CSR. To tackle this issue, this paper will make use of UNCTAD analysis of social responsibility in international investment agreements [7], extrapolating the results to make correlations with CSR praxis around the globe.

2.1 UNCTAD Policy Options and the Role of State Regulation

UNCTAD provides six regulatory strategies for international investment treaties, which can be used as a starting point to analyze CSR regulatory frameworks worldwide.

No Reference to Social Responsibility.

The voluntary approach relies on deregulation, which is the most common CSR trend, as led by USA companies. Although historically compliant with Friedman's “the social responsibility of the company is to profit” view, it is no longer satisfactory to promote Human Rights in business.

No Lowering of Standards Clause.

The aim is to prevent the flexibilization of legislative requirements to attract investment. This concern arises from the capture theory, in countries with low bargaining power vis-à-vis transnational corporations. It may influence legislation on home countries to ensure a due diligence obligation on the whole production chain - even in foreign subsidiaries -, as seen in France with Loi 2017-399.

Home Country Promotional Measures.

Linked to soft regulation, in a self-regulatory context, there is the possibility of replicating social responsibility programs established in the companies' home countries in their international operations, in a permanent cooperation for development. Although widely used and capable of influencing the creation of social responsibility standards, this hypothesis does not consider the structural differences between countries nor the need to adapt such programs. This is the main CSR framework adopted by companies operating in African oil exploitation.

Non-binding Social Responsibility Standards Included in an Agreement.

By this standard, soft regulation bases the adoption of parameters on social responsibility in treaties, without the provision of penalties. EU provisions on reporting obligations are an example of its adoption.

Inclusion of Generally Binding Social Responsibility Provisions into an Agreement.

This framework regards States as having a positive role in regulating social responsibility, linking investment grants to such parameters. Since there is the possibility of sanctioning measures, such as profit control, this hypothesis is linked to hard regulation, by national legislation. National legislations on these parameters are in place in both India - The Companies Act, 2013, section 135 - and Mauritius - the Income Tax Act, 1995, consolidated with Finance Act, 2018 - have national legislation on these parameters, but their efficiency is yet to be proven.

Reservation of Regulatory Powers in Relation to Social Responsibility Issues.

Taking a step further, on this framework, government reserves regulation on social responsibility, if soft standards are not adopted voluntarily by companies, or to encourage business to do so. This is the case for China and Brazil, both having legislation linking businesses with social responsibilities, as will be further analyzed.

3 CSR in Brazil

In Brazil, the legislative categorization of social function of companies means that the corporations may not only be driven by profit, but give positive social returns, addressing national development concerns. The legislation lists environmental, competitive and consumer issues, based on Constitution provisions of economic organization.

Despite the fact that CSR provides income as a profitable social marketing strategy, Brazilian frameworks allows that the companies with the largest investments on social projects don't use their own money for that: by creating foundations, these companies embrace joint ventures with non-governmental organizations (NGOs) to amass donations from the civil society.

Creation of specific entities to manage CSR programs, in the form of foundations declared of public utility (Law 91/135) or Civil Society organizations with public interest (OSCIPs) (Law 9.790/1999) allows the mother company to have tax benefits: accounting procedures promote a deduction of 2% of declared operational profits in donations to such entities. Even with these incentives, private investments in Brazil are not proportional to capital flow: CSR expenditures in Brazil are way lower than those of USA.

Although the alignment of social impact actions with public policies has increased in recent years, the choice of programs follows a discretionary decision, and the companies oftentimes disregard actions that could reduce social deficit caused by their own economic activities. This practice is more frequent in transnational corporations, which tend to copy international CSR programs with punctual adaptations, thus leading to debates on CSR's efficiency and effectiveness. In 2022, cultural sponsorship (23%), education (19%) and infrastructure (13%) received the most resources from companies in Brazil [8]. Economic rationalization of private interests drives CSR projects to center in rich regions - due to convenience for implementation or visibility. This may increase social inequalities and regional discrepancies, which conflicts with constitutional provisions that the society should aim to become an equal, fair and cooperative community.

Even though there is no binding regulatory reporting obligation, a constant increase in CSR reports by Brazilian companies was driven by private players, like stock markets: B3 (the Brazilian stock exchange) has more than 40 investment funds in which companies have to fulfill ESG criteria [9], reflected on its B3 Brazil ESG Index, by fusing previous corporate sustainability and carbon efficiency indexes.

An incipient public policy regarding social investment may change CSR approach in Brazil: from December 2017, the federal government established the National Impact Economy Strategy a (Enimpecto, Decree 9.244/2017), to promote a friendly environment to economic development through impact investment and business that solve social and environmental issues. This national legislation was ahead of the 2018 World Economic Forum, in which impact investment arose to international agenda. The multiplayer characteristic of impact companies may promote the culture of socio-environmental impact assessment in institutions, companies, and businesses, but its applicability is yet to be seen.

4 CSR in China

Now a widespread practice, CSR in China had a rough start: introduced by foreign-invested enterprises since 1990s, it only gained steam with legislative changes on the Company Law in 2005, which stated on article 5 that social responsibility is an obligation of business operations. Afterwards, Shanghai and Shenzhen stock exchanges incorporated reporting obligations for listed companies, as regulated by China Securities Regulatory Commission (CSRC). In 2019, Chinese companies have published 2,089 CSR reports [10].

State owned enterprises rank higher in CSR compliance, and disclose more ESG reports [11]. A sanction framework is under the works, following the release of the Corporate Social Credit System (CSCS), a regulatory technology project that consolidates reported data to direct state supervision: companies with high scores will experience less random inspections, as government surveillance will be concentrated on low compliant firms. Local governments are gradually implementing this system, with seven provinces having published their scoring standards by 2021 [12].

The choice of CSR programs tend to align with government policy documents, central and local regulations, as well as the concerns voiced by Chinese Communist Party (CPP) representatives. The first wave of CSR programs connected with efforts to build a harmonious society in China, articulated by President Hu Jintao. Recently, companies have directed CSR donations to common prosperity projects, following the leadership of President Xi, with tech tycoons Alibaba and Tencent committing billionaire donations on the next years [11].

5 Seasoning Brazilian CSR Framework with a Chinese Flavour

As shown in previous sections, both Brazil and China reserve regulatory powers on CSR, but whilst Brazil tend to encourage social responsibility by offering tax benefits, China has a more state-driven approach, steering the choice of programs to align with government concerns.

Companies in Brazil still don't allocate as much funds in CSR programs as international experience. This expenditure is still lower, considering that tax benefits boils down to private usage of public funds. Instead of companies giving back to society, the choice of adopting certain CSR programs is a means of tributary planning. Thus, the business ethics, much celebrated in CSR theory, gives floor to the ever known economic rationality, with the added benefit of marketing opportunities.

China model of concentrating CSR investment in projects compatible with national development programs can solve the gap between CSR and public policy. Whilst Brazil steers CSR to certain matters like sports and culture by providing tax benefits, there is no directive to decentralize investments in already developed locations. Also, social needs are not exactly reduced to fiscally incentivized. affairs It is important to note that China does not restrict the fields in which social investment can be made, but only suggests the buzzing issues. Brazil could take a note from the Chinese handbook and

be more vocal about the priorities of public policy to which private investment should contribute, as true social responsibility projects need a coupling to national development programs.

6 Conclusion

Brazil and China have experienced a surge in CSR adoption in recent years, driven by multiple players. While CSR reporting rates keeps increasing in both countries, the effectiveness of programs still has room for improvement. It is important to note that CSR should not be reduced to donations, as a socially sustainable business should integrate social concerns to the main activity. The company, from the very development of its economic activity, should map, solve and remedy their negative impacts, and socially operate in a positive way to local communities and other stakeholders, contributing to development. These actions should be publicized through a report, which can be used by the state and organized civil society, to hold companies liable in case of inconsistencies of information. Therefore, CSR in both Brazil and China is under a regulated self-regulation framework, as companies will freely define their corporate social responsibility policies, but with the possibility of social control through legal instruments provided by national legislation.

Acknowledgments

This study is a further exploration on the authors' doctoral thesis, which was partially funded by CNPQ (Brazil), under the research environment provided by the IFPB (Brazil).

References

1. Bowen, H. R. *Social responsibilities of the businessman*. NY: Harper&Brothers, 1953.
2. CARROLL, A. B. A three-dimensional conceptual model of corporate social performance. *Academy of Management Review*, 4, 497-505, 1979.
3. PRESTON, L. E.; POST, J. E. *Private management and public policy: The principle of public responsibility*. Englewood Cliffs, NJ: Prentice Hall, 1975.
4. ConstituteProject homepage, <https://www.constituteproject.org/>, last accessed 2024/06/05.
5. Wu, Lunting. 2022. "Rising Powers and Global Governance: dissecting the dynamics between Brazil and China." *CEBRI-Journal Year 1, Number 2 (Apr-Jun)*: 112-134.
6. ANDREASSEN, B. A., SANO, H., e MCINERNEY-LANKFORD, S. (eds). *Research Methods in Human Rights*, Cheltenham, UK: Edward Elgar Publishing, 2017.
7. UNCTAD/ITE/IIT/22 (2001), *Social Responsibility*. The UNCTAD series on issues in international investment agreements. UN Publications: New York and Geneva, 2001.
8. Duff, C (ed). *The Trialogue Business in Society Handbook*. 26th edn. Trialogue: Cape Town, 2023.
9. Valor investe homepage, <https://encurtador.com.br/8SPiF>, last accessed 2024/06/20.

10. Wang, J. “CSR as CPR: The Political Logic of Corporate Social Responsibility in China” in Symposium on the Social Role of Corporations in Asia-Pacific, USALI East-West Studies, 2, No. 5, March 23, 2022.
11. Zeng, J. Corporate Social Responsibility in China: A Tool of Policy Implementation. Accounting, Economics, and Law: A Convivium. 10.1515/acl-2022-0085, 2024.
12. Lin, L. Y. “Promoting Social Responsibility through Ratings: China’s Corporate Social Credit System” in Symposium on the Social Role of Corporations in Asia-Pacific, USALI East-West Studies, 2, No. 6, March 31, 2022.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

